Filed 8/15/19 In re J.P. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re J.P., A Person Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. Jorge P., Defendant and Appellant.	B291915 Los Angeles County Super. Ct. No. 18CCJP02117A

APPEAL from orders of the Superior Court of Los Angeles County. Stephen C. Marpet, Juvenile Court Referee. Reversed with directions.

Karen B. Stalter, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel for Plaintiff and Respondent.

Valarie N. Lankford, under appointment by the Court of Appeal, for Minor.

Father, the noncustodial and nonoffending parent of 12-year-old J.P., appeals the juvenile court's disposition order denying his request to place his son with him in Honduras. Father also challenges an order requiring him to complete a 52-week domestic violence program. We conclude the evidence presented at the disposition hearing was insufficient to support the court's finding that the placement with father would be detrimental to J.P. (Welf. & Inst. Code, § 361.2),[1] and will therefore reverse the disposition order, with directions to conduct a new hearing, at which the court may order the child welfare agency to obtain additional information about the suitability of father's home as a placement. The juvenile court must also consider the enforceability of its continued jurisdiction in Honduras before making a placement decision. The order to complete a domestic violence program is also reversed, as the undisputed evidence conclusively negates the apparent basis for the order.

FACTS AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we state the evidence in the light most favorable to the juvenile court's

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[1] Statutory references are to the Welfare and Institutions Code.

findings, resolving all conflicts and drawing all reasonable inferences to uphold the court's orders, if possible. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.)

The family consists of father, mother, and J.P. Mother and father lived together for many years but were never married. Father was born in Honduras and does not have legal immigration status.

In June 2018, the juvenile court detained J.P. from the parents' custody after mother failed to comply with a home of parent order requiring her to enroll in a six-month substance abuse program and to test clean for alcohol use. The court found prima facie evidence for dependency jurisdiction based on mother's persistent abuse of alcohol, which rendered her unable to care for J.P.

The family had a prior child welfare history, dating back to 2010, when the parents brought J.P. to the hospital after father accidentally shot the child in his thigh with a BB gun. After J.P. was treated for his wound, the Department of Children and Family Services (Department) closed the referral.

In August 2014, the Department substantiated a general neglect allegation against the parents, after police arrested father for a domestic violence incident involving mother. According to the parents, the incident concerned an accusation of infidelity; however, they did not elaborate on the nature of the violence.[2] Father's CLETS report showed he was convicted of misdemeanor spousal abuse and sentenced to one day in jail and 36 months of

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[2] The parents also suggested that pain medication father had been taking after a car accident might have played a role in the incident.

probation.[3] The parents reported father completed a domestic violence program in connection with the case. The Department confirmed the parents participated in a voluntary family maintenance plan from August 2014 to July 2015, and the dependency referral was closed as "Situation Stabilized."

In early February 2017, father paid the last of his fines for the spousal abuse conviction and updated his address with the criminal court. Three days later, federal Immigration and Customs Enforcement agents detained him. Within a week, he was deported back to Honduras.

After father's deportation, mother began to drink heavily. She said it had been hard to manage without father's support and things had progressively become worse. By February 2018, she was drinking as much as three quarters of a bottle of vodka a night until she passed out.

Due to mother's drinking, and without father in the home, J.P. had assumed most of the household duties to assist mother. He started coming to school late, or missing classes all together, and his grades suffered. He worried that mother would die if he did not take care of her. On February 5, 2018, J.P. reported his worries to a school counselor. The counselor, as his mandate required, referred the matter to the Department.

A social worker met with mother and observed she had visible symptoms of alcohol withdrawal. Mother admitted it was "shameful" that her son had to take care of her, and discussed the difficulties she faced after father's deportation. She recognized she needed help to stop drinking. She agreed to a safety plan

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[3] Father's CLETS report showed two other misdemeanor convictions for theft in 1996 and 1998.

with the Department that required her to enroll in a substance abuse program and to submit to on demand drug and alcohol tests.

The social worker spoke to father, who was surprised to learn of mother's heavy drinking. Although he had spoken with J.P. frequently since being deported to Honduras, father said he had no prior knowledge of mother's struggles with alcohol. He was frustrated that he could not be present to help mother and J.P. He worried about his son and said he would like to have J.P. with him in Honduras.

By March 2018, mother had enrolled in Alcoholics Anonymous and she had been attending individual counseling. Her on demand test results were negative for alcohol, but positive for marijuana. When asked about the test results, mother admitted she began using marijuana three months earlier "as a way to cope with her problems." She had since stopped using marijuana, and she denied using it in front of J.P. A subsequent test result came back clean for all substances.

The Department nevertheless determined the potential for future risk to J.P. remained "high" due to the severity of mother's alcohol problem and her lack of extended family support. It also expressed concern that J.P. would be afraid to report if mother relapsed, and that he might instead try to deal with mother's alcoholism himself as he had before. On April 3, 2018, the Department filed a dependency petition, alleging mother's alcohol and marijuana abuse endangered J.P. The petition did not name father as an offending parent.

The juvenile court ordered J.P. to remain in mother's custody on the condition she enroll in a six-month rehabilitation program and randomly test for drugs and alcohol.

On June 18, 2018, the Department filed an application to detain J.P. from mother's custody due to her violation of the court's order. The Department reported mother had missed a scheduled test and she had not responded to calls, text messages, or voicemails to schedule subsequent tests. The juvenile court ordered J.P. detained from mother's custody, finding prima facie evidence to support the exercise of dependency jurisdiction.

On July 2, 2018, J.P.'s foster caregiver reported that J.P. had become distressed after a monitored phone call with father. During the call, father questioned J.P. about mother "having a love affair" and he told the child "mother was going to kill herself" with alcohol. Father also instructed J.P. that he had to be "the father of the home." After the call, J.P. was visibly distraught. He blamed himself for the family's current predicament and discussed plans to leave the foster home, to take his mother's credit cards, and to tell all the liquor stores in the area not to sell alcohol to his mother. A social worker counseled father regarding the appropriate parameters of conversations with J.P. Father said he understood and apologized. The caregiver said J.P. became so distressed "after the phone calls with father" that he "pulls his hair out."

On July 25, 2018, father advised the Department that he wanted J.P. sent to Honduras and placed in his care. He said he was able to provide housing and food for J.P. The Department had no other details about father's living conditions in Honduras. J.P. told his social worker he only wanted to visit father and did not want to live in Honduras. The Department reported it had investigated the possibility of placing J.P. with family members, but it had yet to identify any family or friends who were able to care for him.

The Department recommended the court sustain the petition as to mother and remove J.P. from her physical custody. It also recommended substance abuse and parenting programs for mother and monitored visits with J.P. The Department recommended that father have monitored phone calls with J.P.

On August 1, 2018, the court held a combined jurisdiction and disposition hearing. Mother waived contest to jurisdiction, and the court sustained the petition as pled.

With regard to disposition, father's counsel advised the court of father's request to have J.P. placed with him in Honduras if the child could not reside with mother. Counsel stressed that as a nonoffending, noncustodial parent, father was presumptively entitled to custody after J.P.'s removal from mother.

Minor's counsel objected that there was too little information to judge whether it would be in J.P.'s "best interest" to be placed with father at the time, and argued the court and parties should wait to obtain "additional information before we make an order to that effect." Minor's counsel expressed concern about the "appropriateness" of father's phone call with J.P. and worried that without "educating" father about suitable topics, the communications might cause J.P. "additional distress."

The juvenile court asked mother if she and father had an incident of domestic violence three to four years earlier. Mother confirmed they had and that father was arrested and convicted. The court found, "based upon father's past history at this point," that placing J.P. with father would be "detriment[al]" to the child.

Minor's counsel agreed J.P. should not be released to father that day, but she asked that the Department "complete an

investigation" to "obtain additional information about the housing circumstances in the Honduras[.]" The court voiced its concern that "father was convicted of domestic violence in 2016 and deported as a result of that, which is a crime that certainly doesn't inure to his benefit of allowing this child to go to Honduras to live in a home where father is a perpetrator of domestic violence, probably when the child was living with dad."[4] Minor's counsel agreed and suggested the court order father to complete a domestic violence program. The court said it was inclined to order father to complete a 52-week domestic violence class for perpetrators.

Father's counsel objected, arguing father "was not given notice of the court finding detriment" and the Department had "never pled anything about" his conduct. The court overruled the objection, noting it was authorized to consider "all of the evidence" in determining what services were needed to reunify the family. The court found that if father was ever going to have "meaningful contact" with J.P., he needed to complete a 52-week domestic violence program and a parenting program. To that end, the court ordered the Department to assist father with identifying services in Honduras.

Father filed a timely appeal from the order denying his request for custody and from the order to complete a 52-week domestic violence program and a parenting program.

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[4] The trial court indisputably misspoke, as father's CLETS report showed his spousal abuse conviction occurred in August 2014—four years before the dispositional hearing.

DISCUSSION

1. *The Evidence Did Not Support the Detriment Finding; However, Remand Is Required to Assess Current Circumstances and to Ensure the Juvenile Court's Continued Jurisdiction Is Enforced*

Father argues the evidence was insufficient to support a finding that placing J.P. in his custody would be detrimental to the child's physical and emotional well-being. As we explain below, we agree the evidence was insufficient to support the detriment finding; however, before the juvenile court may place J.P. with father, it must first assess the child's interests in view of current circumstances and confirm adequate protections are in place to ensure its orders will be enforced in Honduras.

a. *Law governing placement with the noncustodial parent*

" 'A parent's right to care, custody and management of a child is a fundamental liberty interest protected by the federal Constitution that will not be disturbed except in extreme cases where a parent acts in a manner incompatible with parenthood.' " (*In re Abram L.* (2013) 219 Cal.App.4th 452, 461 (*Abram L.*).) A nonoffending parent has a constitutionally protected interest in assuming physical custody of his or her dependent child which may not be disturbed " 'in the absence of clear and convincing evidence that the parent's choices will be "detrimental to the safety, protection, or physical or emotional well-being of the child." ' " (*Ibid*.)

Section 361.2, subdivision (a) governs the rights of a noncustodial parent to custody of a dependent child. (*In re C.M.* (2014) 232 Cal.App.4th 1394, 1401 (*C.M.*); see also *In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 301 (*D'Anthony D.*)

[section 361.2, subdivision (a) applies even when noncustodial parent's conduct is a basis for dependency jurisdiction].)
The statute provides: "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. *If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child*." (§ 361.2, subd. (a), italics added.) Section 361.2, subdivision (a) "evinces the legislative preference for placement with the noncustodial parent when safe for the child." (*In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1262 (*Patrick S.*).)

"To comport with due process, the detriment finding must be made under the clear and convincing evidence standard." (*C.M., supra,* 232 Cal.App.4th at p. 1401; *D'Anthony D.*, *supra*, 230 Cal.App.4th at pp. 301–303; *Abram L., supra,* 219 Cal.App.4th at p. 461; *Patrick S., supra,* 218 Cal.App.4th at p. 1262; *In re John M.* (2006) 141 Cal.App.4th 1564, 1569 (*John M.*); *In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1828–1829 (*Marquis D.*).) Clear and convincing evidence requires "a high probability, such that the evidence is so clear as to leave no substantial doubt." (*Patrick S.*, at p. 1262; *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426 (*Luke M.*).) The *Marquis D.* court explained the higher standard of proof as follows:

> "[T]he trial court's decision at the dispositional stage is critical to all further proceedings. Should the court fail to place the child with the

> noncustodial parent, the stage is set for the court to ultimately terminate parental rights. At all later review hearings, the court may deny return of the child to the parent's physical custody based on a finding supported only by a preponderance of the evidence that return would create a substantial risk of detriment to the child's physical or emotional well-being. (§[§] 366.21, subds. (e) & (f), 366.22, subd. (a).) [¶] If a preponderance of the evidence standard of proof is applied to deny initial placement with the noncustodial parent, that parent may have his or her parental rights terminated without the question of possible detriment engendered by that parent ever being subjected to a heightened level of scrutiny."

(*Marquis D.*, at p. 1829.)

The noncustodial parent does not have to prove lack of detriment under section 361.2, subdivision (a). (*C.M., supra,* 232 Cal.App.4th at p. 1402.) Rather, the party opposing placement with a noncustodial parent has the burden to show by clear and convincing evidence that the child will be harmed if the parent is given custody. (*Ibid.*; *In re Jonathan P.* (2014) 226 Cal.App.4th 1240, 1256.)[5]

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[5] This rule governs even when granting custody to the noncustodial parent requires the juvenile court to place the child outside the United States. Although section 361.2, subdivision (f)(1) states that a dependent child "shall not be placed outside the United States prior to a judicial finding that the placement is in the best interest of the child," and section 361.2, subdivision

b. ***There was insufficient evidence that placement with father would be detrimental to J.P.'s physical or emotional well-being***

Father argues the evidence was insufficient to support the juvenile court's detriment finding under section 361.2, subdivision (a). The Department (joined by minor's counsel) argues the following evidence was sufficient to support the finding: J.P. wanted to remain in the United States in hopes of reunifying with mother; the child became distressed after father told him he was the "father of the home"; and father had a past conviction for spousal abuse. Reviewing the record under the applicable substantial evidence standard of review (see *C.M., supra,* 232 Cal.App.4th at p. 1402; *John M., supra,* 141 Cal.App.4th at pp. 1569–1570; *Patrick S., supra,* 218 Cal.App.4th at p. 1262), we are compelled to agree with father that the evidence was insufficient to support the detriment finding.

While the juvenile court may consider the child's wishes and his desire to reunify with the formerly custodial parent in determining detriment, neither factor is sufficient to deny a parent his or her constitutionally protected right to custody in a dependency proceeding. (*C.M., supra,* 232 Cal.App.4th at pp. 1397–1398, 1402 [12-year-old child's wishes insufficient, despite evidence that child was " 'terrified of being released to her

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(f)(2) mandates that the "party or agency requesting placement of the child outside the United States shall carry the burden of proof and shall show, by clear and convincing evidence, that placement outside the United States is in the best interest of the child," section 361.2, subdivision (f)(6) expressly states that "[t]his subdivision shall not apply to the placement of a dependent child with a parent pursuant to subdivision (a)."

father' "]; *Abram L., supra,* 219 Cal.App.4th at pp. 460–461, 464 [wishes of 13- and 15-year-old brothers and alleged lack of relationship between children and noncustodial parent not sufficient]; *John M., supra,* 141 Cal.App.4th at p. 1570 [13-year-old child's wishes and reunification plan with offending custodial parent not sufficient to deny out-of-state father custody]; but see *Luke M., supra,* 107 Cal.App.4th at pp. 1424–1427 [wishes of 10- and eight-year-old children and unusual bond with half sibling, coupled with possibility of reunifying with offending custodial parent sufficient to support detriment finding].)

For example, in *John M.*, the child welfare agency detained John (13 years old) and his 10-month-old half-sister, and placed them with a local relative after the mother physically abused John. (*John M., supra,* 141 Cal.App.4th at p. 1567.) John's father, who lived in Tennessee, wanted custody of John, with whom he had been in telephone contact for a year after not speaking with the child for four years. (*Id.* at pp. 1567, 1570–1571.) John wanted to remain with his local relative while the mother attempted to reunify with him and his half-sister. (*Id.* at pp. 1567–1568.) The juvenile court declined to place John with the father because there had been little contact between them, John did not want to move to Tennessee, the father's out-of-state location made him " 'an unknown entity,' " there was a reunification plan for the mother, and services would be necessary to ensure John's safety and the success of a placement with the father. (*Id.* at pp. 1568, 1570.) The reviewing court reversed, concluding these factors were not sufficient, either alone or in combination, to support a finding of detriment under section 361.2, subdivision (a). (*Id.* at pp. 1570–1571.)

The *Patrick S.* court followed *John M.*, explaining the case "stands for the principle that where a child has a fit parent who is willing to assume custody, there is no need for state involvement unless placement with that parent would create a substantial risk of detriment to the child." (*Patrick S., supra,* 218 Cal.App.4th at p. 1263, citing § 361.2, subd. (a).) And, "[w]hen the parent is competent, the standard of detriment is very high." (*Patrick S.,* at p. 1263.) In *Patrick S.*, the juvenile court found that placement of a 13-year-old child with his father in Washington state would create a substantial risk of detriment to the child's "emotional well-being" based on "the totality of circumstances, including [the child's] wishes, his anxiety about moving to his father's home, his need for continued therapeutic services, the lack of an established relationship with his father and stepmother, [the father's] scheduled [military] deployments and his plan to homeschool [the child], and the lack of available child welfare services in father's home state." (*Id.* at p. 1262.) The reviewing court concluded this evidence was insufficient to establish detriment. (*Ibid.*) Critically, the court observed that "a child's preference is not the deciding factor in a placement decision, even when that child is a teenager," because "[t]he liberty interest of a minor is not coextensive with that of an adult." (*Id.* at p. 1265.) And, the reviewing court explained, the juvenile court erred in focusing on the child's "short-term emotional needs," when it should have "placed greater weight on the long-term benefits [the child] would gain" from being placed with a "a competent, caring parent who desires to assume custody of him." (*Ibid.*)

Under *John M.* and *Patrick S.*, J.P.'s understandable desire to stay in the country of his birth, and his palpable distress over

being separated from mother while she worked through her issues with alcohol, was insufficient to establish detriment under section 361.2, subdivision (a). To be sure, the Department and J.P.'s counsel were justifiably concerned that father's phone call had amplified the child's distress by suggesting the 12-year-old should shoulder the burden of caring for his mother while father was out of the home. But father apologized for the incident when the social worker explained to him J.P.'s fragile emotional state, and the record before us discloses no other instance of father causing J.P. distress, despite the Department's report that they spoke regularly with one another after father's deportation. Notwithstanding J.P.'s sensitivity to mother's struggle with alcohol, this isolated incident was not enough to find that placement in father's home would be detrimental to the child's emotional well-being. (See *Patrick S., supra,* 218 Cal.App.4th at pp. 1261–1262 [child's diagnosis with "adjustment disorder," coupled with "lack of relationship" between child and father, and evidence that father "did not understand [the child's] needs" was insufficient to find detriment].)

The Department counters that the juvenile court was obliged to "balance [J.P.'s] need to reunify with his custodial parent [mother] with the noncustodial parent's [father's] right to custody," and "this factor," when considered together with J.P.'s wishes and the prospect of "an international move," "weighed against sending [the child] to Honduras." The Department relies on *Luke M.* for the proposition. In *Luke M.*, the juvenile court removed two children from the mother's custody but declined to place them with their noncustodial father who lived in Ohio. The juvenile court found out-of-state placement would be detrimental to the children's emotional well-being because of the significant

bond the children had with their two siblings who remained in California. (*Luke M., supra,* 107 Cal.App.4th at p. 1419.) On appeal, the father argued the lower court's ruling violated his substantive due process rights because it "placed sibling rights over parental rights." (*Id.* at p. 1423.) The reviewing court rejected the argument, citing the juvenile court's finding that "it was in the best interests of the children to reunify with their mother" and a social worker's opinion that "moving the children to Ohio would impede reunification." (*Id.* at pp. 1423–1424.) Based on this finding and evidence, the *Luke M.* court concluded: "[I]n rendering its placement order, the court also had to balance the children's need to reunify with their custodial parent versus the noncustodial parent's right to custody. Under the circumstances of this case where the custodial parent is trying to reunify and the court has concluded such reunification would best serve the children's interests, [the father's] contention that sibling rights were given precedence over parental rights is misplaced." (*Id.* at p. 1424.)

Luke M. is distinguishable. First, unlike the juvenile court in *Luke M.*, the court here made no express finding that reunifying with mother, as opposed to living with father in Honduras, would be in J.P.'s best interest. Indeed, neither minor's counsel nor the Department ever took such a position. On the contrary, minor's counsel said only that she did not know if placement with father was "in [J.P.'s] best interest *at this time*" and stipulated she was "not opposed to obtaining more information" before making a placement decision. (Italics added.) And, unlike the social worker in *Luke M.*, here, the Department offered no evidence about the conditions in Honduras or what effect the placement might have on reunification with mother—

a point we discuss more below. At most, the Department's reports showed father's preference was for J.P. to remain in mother's custody, if possible, which suggests he would have cooperated with the Department's efforts to facilitate reunification if J.P. were placed in his custody.

More fundamentally, we do not read *Luke M.* to hold that the possibility of reunifying with an offending custodial parent is a substitute for *evidence* of detriment, nor that the possibility of reunification supplants the noncustodial parent's constitutional right to custody in the absence of the requisite detriment showing. Critically, the *Luke M.* court described its holding as "a narrow one" that "express[ed] no opinion regarding the relative importance of sibling relationships and the right to parent where an offending custodial parent fails to reunify." (*Luke M., supra,* 107 Cal.App.4th at p. 1424.) This important caveat is especially relevant to this case. While everyone rightly hopes for mother to reunify with J.P., her recovery is far from assured. At the time of disposition, the pattern of heavy drinking that brought J.P. within the court's jurisdiction had persisted for over a year, and even after mother agreed to submit to on demand testing to maintain custody of her son, she failed to comply with the court's home of parent order. Given the critical importance of the disposition decision to all further dependency proceedings, we cannot endorse a rule that weakens the procedural protections established to safeguard father's fundamental right to parent his child, nor can we accept a rule that makes a noncustodial parent's right to custody dependent upon an offending parent's prospect of eliminating the conditions that warranted dependency intervention. (See *Marquis D., supra,* 38 Cal.App.4th at p. 1829 [explaining "the trial court's decision at

the dispositional stage is critical to all further proceedings," because,"[s]hould the court fail to place the child with the noncustodial parent, the stage is set for the court to ultimately terminate parental rights"]; see also *In re Henry V.* (2004) 119 Cal.App.4th 522, 530 ["A dispositional order removing a child from a parent's custody is 'a critical firebreak in California's juvenile dependency system' [citation], after which a series of findings by a preponderance of the evidence may result in termination of parental rights."]; cf. *John M., supra,* 141 Cal.App.4th at p. 1570 [existence of reunification plan for offending custodial parent insufficient to establish detriment under section 361.2, subdivision (a)].) In any event, as we discuss in the next section, the juvenile court will be able to address the important matter of reunification with mother by making an appropriate order to ensure its continued jurisdiction over J.P. is enforced in Honduras.

Finally, the Department argues father's 2014 spousal abuse conviction was sufficient to support the juvenile court's detriment finding. Our colleagues in Division Eight rejected a similar argument in *C.M.* In that case, the Department argued the dependent child's wishes not to live with the noncustodial father, coupled with the father's history of alcohol abuse and domestic violence (an over 20-year-old conviction for spousal abuse and a dismissed misdemeanor arrest), were sufficient to support the juvenile court's detriment finding. (*C.M., supra,* 232 Cal.App.4th at pp. 1398–1399 & fn. 3, 1402.) The reviewing court disagreed, emphasizing that none of father's misconduct "formed the basis of jurisdiction" and, as to the domestic violence conviction, "there was no evidence of any recent, much less current, domestic violence by father." (*Id.* at pp. 1403–1404; see also *Abram L.,*

supra, 219 Cal.App.4th at p. 463 [detriment finding was not supported by allegations of father's unresolved alcohol problem and history of substance abuse where juvenile court dismissed those allegations from the petition and there was no evidence the father used illicit drugs or abused alcohol at any time after the dependency proceedings commenced].) However, because it decided the matter "based on the facts extant on the day of the [disposition] hearing," the *C.M.* court concluded the juvenile court must hold a new hearing after remand, taking "into account circumstances and events that have taken place subsequent to the [earlier disposition] hearing." (*C.M.,* at p. 1404.)

The Department argues *C.M.* is distinguishable because the father's spousal abuse conviction in that case was over 20 years old. The distinction makes no substantive difference for this case. Here, the evidence is undisputed that father completed a domestic violence program and complied with a voluntary family maintenance plan at the time of his conviction, and the Department closed the concurrent dependency referral, having determined the situation had stabilized. It cannot be the case that father's past conduct constitutes substantial evidence of current detriment when three years earlier he posed no risk to J.P. and there has been no intervening incident of violence since.

The Department also attempts to distinguish *C.M.* on the ground that there was "no indication" in that case that the child welfare agency "was unable to assess the safety of the father's home." We have no such indication in this case either. To be sure, there had been no suitability assessment of father's home in Honduras at the time of the disposition hearing. But this *lack of evidence* is not sufficient to support a detriment finding under section 361.2, subdivision (a). As noted (see fn. 5, *ante*), even

though father resided outside the United States, the Department still had the burden to establish by clearing and convincing evidence that placing J.P. in father's custody would be detrimental to the child's physical or emotional well-being. (§ 361.2, subds. (a), (f)(6).) Its failure to attempt this assessment plainly was not sufficient to meet its burden under the statute. Knowing it was seeking J.P.'s removal from mother, and that it would have the burden of establishing detriment, the Department, at a minimum, should have requested a continuance to give it sufficient time to conduct a suitability assessment of father's home before the disposition hearing. (See, e.g., *John M., supra,* 141 Cal.App.4th at pp. 1571–1572 [juvenile court erred by failing to grant continuance to allow agency to gather evidence regarding noncustodial father, including information about suitability of out-of-state placement].)

Like the court in *C.M.*, we have concluded the evidence was insufficient to support the detriment finding based on the facts existing on the day of the hearing as disclosed by the appellate record. (See *C.M., supra,* 232 Cal.App.4th at p. 1404.) Thus, at the disposition hearing following remand, the juvenile court may order the Department to obtain any information it deems necessary about the suitability of placing J.P. with father, and the court must make its findings under section 361.2 accounting for circumstances and events that have occurred since the August 2018 hearing. (See *C.M.*, at pp. 1404–1405; see also *John M., supra,* 141 Cal.App.4th at p. 1576 [reversing detriment finding and remanding with directions to order agency to obtain information about suitability of noncustodial parent's out-of-state home for placement].)

c. *The juvenile court must ensure its continued jurisdiction over J.P. will be enforced before placing the child with father in Honduras*

Although it had no reason to raise the issue below given the juvenile court's detriment finding, on appeal the Department argues the court can properly place J.P. with father only after it has ensured its continued jurisdiction over the child in Honduras. We agree. Should problems with the placement arise, or should the juvenile court ultimately determine it is in J.P.'s best interests to be returned to mother's custody, J.P.'s welfare would be jeopardized if the court is unable to effect his return to California. Having assumed dependency jurisdiction over J.P., the court must ensure that it can make and enforce any further orders that are necessary to protect the child before he is placed outside the United States. (See *In re Karla C.* (2010) 186 Cal.App.4th 1236, 1267–1268 (*Karla C.*).)

When a court places a dependent child with the noncustodial parent, it has discretion, but is not required, to terminate dependency jurisdiction. Section 361.2, subdivision (b) authorizes three alternative courses of action: The court may order the noncustodial parent to assume custody of the child, terminate juvenile court jurisdiction, and enter a custody and visitation order. (§ 361.2, subd. (b)(1).) It may continue juvenile court jurisdiction and require a home visit within three months, after which the court may make orders as provided in subdivision (b)(1) or (b)(3). (§ 361.2, subd. (b)(2).) Or the court may order reunification services to be provided to either or both parents and determine at a later review hearing under section 366.3 which parent, if either, shall have custody of the child. (§ 361.2,

subd. (b)(3); *Karla C., supra,* 186 Cal.App.4th at p. 1243; *In re Adrianna P.* (2008) 166 Cal.App.4th 44, 55.)

In *Karla C.*, the juvenile court placed the child with her noncustodial father in Peru and retained jurisdiction under section 361.2, subdivision (b)(2), ordering the child welfare agency to submit a report with an update on the placement and the child's status in three months. (*Karla C., supra,* 186 Cal.App.4th at pp. 1259–1260.) On appeal, the mother argued the court abused its discretion by continuing its jurisdiction without assuring it could effect the child's return to California if needed or otherwise enforce its orders over the child in Peru. (*Id.* at p. 1261.) After reaffirming that our state's dependency law does not prohibit the placement of children outside the United States (*ibid.*), the *Karla C.* court held the juvenile court had erred when it retained its jurisdiction without imposing necessary measures to ensure the enforceability of its orders. (*Id.* at pp. 1267–1268.) Relying on family law cases that require trial courts to certify their custody and visitation orders will remain enforceable before approving an international relocation, the *Karla C.* court explained that those cases "highlight[ed] a concern of at least equal magnitude in a dependency case such as this—whether the orders under consideration will become a nullity once the child is abroad." (*Id.* at p. 1267.) Indeed, the issue could be one of "greater concern" in the dependency context, "where the juvenile court serves in loco parentis in protecting the interests of the minor." (*Id.* at pp. 1267–1268.) In view of the juvenile court's obligation to protect the welfare of a dependent child under its jurisdiction, the *Karla C.* court concluded it was an abdication of the court's responsibility to put the matter of compliance in the father's hands, rather than under the court's

control, when ordering the child placed outside the United States. (*Id.* at p. 1268.)

Although the evidence presented at the disposition hearing was insufficient to support a detriment finding, the juvenile court was not required to simply place J.P. with father and terminate its jurisdiction under section 361.2. Indeed, because so little was known about the conditions of father's home in Honduras, we can confidently say that the only reasonable course available to the juvenile court (short of continuing the hearing and ordering the Department to gather evidence about father's home before ruling on disposition), was to continue dependency jurisdiction and order a home study as provided in section 361.2, subdivision (b)(2). Moreover, because J.P. had a significant bond with mother and an interest in reunifying with her, the court had discretion to order reunification services as provided in section 361.2, subdivision (b)(3). In the event mother succeeded in addressing the alcohol abuse issues that warranted dependency jurisdiction, the court also would have an obligation to consider whether returning J.P. to her custody would be in the child's best interests. But, as the *Karla C.* court recognized, none of these obligations could be met if the court's orders were rendered a nullity once J.P. left the country. (*Karla C., supra,* 186 Cal.App.4th at pp. 1267–1268.) Accordingly, on remand, the juvenile court must consider evidence regarding the recognition and enforcement of its continued jurisdiction under the laws of Honduras and, if necessary, impose appropriate measures to ensure the enforceability of its orders while J.P. is outside the United States. (*Id.* at p. 1270.)

2. *The Juvenile Court Abused Its Discretion in Ordering Father to Complete a Domestic Violence Program*

Finally, we address father's contention that the court abused its discretion in ordering him to complete a 52-week domestic violence program.[6] For the same reasons we concluded the evidence was insufficient to support the detriment finding under section 361.2, subdivision (a), we also conclude father's four-year-old spousal abuse conviction is insufficient to warrant his participation in another domestic violence program.[7]

As discussed, section 361.2, subdivision (b)(3) authorizes the juvenile court to order services for the parent who is

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[6] Although father's notice of appeal purports to challenge the order requiring him to participate in parent education classes, he did not object to the classes below and the arguments in his opening brief appear to focus exclusively on the domestic violence program. He has therefore forfeited the issue for appellate relief. (See *In re Anthony Q.* (2016) 5 Cal.App.5th 336, 345; *In re S.B.* (2004) 32 Cal.4th 1287, 1293.) In any event, to the extent father did mean to challenge the order on the ground there was insufficient evidence to require parenting classes, we agree with the Department that father's inappropriate phone call with J.P., in which father failed to appreciate the stress mother's alcohol abuse placed on the child, was sufficient to justify the order. (See § 362, subd. (d); cf. *In re Jasmin C.* (2003) 106 Cal.App.4th 177, 181–182 (*Jasmin C.*) [reversing order for parenting classes that was unsupported by evidence and "apparently was based on a rote assumption that mother could not be an effective single parent without parenting classes, something belied by common sense and experience in 21st-century America"].)

[7] The Department did not recommend that father participate in the domestic violence program and it takes no position regarding father's appeal from the order.

assuming physical custody to allow that parent to retain custody later without court supervision. The court has broad discretion under the statute to determine what services would best serve and protect the child's interests, and we cannot reverse the court's determination absent a clear abuse of that discretion. (*In re Sergio C.* (1999) 70 Cal.App.4th 957, 960; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006; see also § 362, subd. (d) ["juvenile court may direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter" and the order "may include a direction to participate in a counseling or education program"].) The juvenile court is not limited to the content of the sustained petition when it considers what services would be in the child's best interests (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311); however, any program the court orders " ' "must be appropriate for [the] family and be based on the unique facts relating to that family." ' " (*In re Drake M.* (2012) 211 Cal.App.4th 754, 770 (*Drake M.*).) And, the program must be "designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300." (§ 362, subd. (d); *Jasmin C., supra,* 106 Cal.App.4th at p. 180.)

Minor's counsel asserts the 2010 incident in which the parents brought J.P. to the hospital after father accidentally shot him in the leg with a BB gun and the 2014 conviction for spousal abuse, coupled with father's misdemeanor theft convictions and deportation, warranted the order to participate in a 52-week domestic violence program. We disagree. The 2010 incident, father's petty theft convictions, and his past deportation have no relevance to the conditions that led to J.P.'s dependency, and, even if they did, there is no reasonable basis to conclude that a

52-week domestic violence program would be at all effective in eliminating the conditions that led to the conduct. (See *Drake M., supra,* 211 Cal.App.4th at p. 770 [substance abuse program unjustified where there was "nothing in the record to indicate that [the father's] use of medical marijuana led to the finding of dependency jurisdiction"].) As for the 2014 spousal abuse conviction, as we have discussed, the evidence is undisputed that father completed a domestic violence program and complied with a year-long voluntary family maintenance plan at the time of his conviction, and the Department closed the concurrent dependency referral after determining the situation had stabilized. We cannot see what good would be accomplished by requiring father to complete yet another year-long domestic violence program when there is no indication in the record that his past conduct had any bearing on the conditions that led to J.P.'s dependency. The juvenile court abused its discretion in ordering father to participate in the program.

DISPOSITION

The disposition order is reversed, and the matter is remanded to the juvenile court for a new disposition hearing. At the hearing, the court may order the Department to obtain information about the suitability of father's home as a placement for J.P., and the court shall consider the current circumstances, as well as the enforceability of its continued jurisdiction in Honduras. The court is directed to make its placement decision after receiving any information it deems necessary, and after evaluating the criteria in Welfare and Institutions Code section 361.2, in a manner consistent with this opinion. The order requiring father to complete a 52-week domestic violence program is reversed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.